

SECOND REGULAR SESSION

# SENATE BILL NO. 922

89TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR HOUSE.

Read 1st time February 17, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S3884.011

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## AN ACT

To repeal sections 288.126 and 288.150, RSMo 1994, and sections 288.090, 288.130 and 288.160, RSMo Supp. 1997, relating to employment security, and to enact in lieu thereof five new sections relating to the same subject, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 288.126 and 288.150, RSMo 1994, and sections 288.090, 288.130 and 288.160, RSMo Supp. 1997, are repealed and five new sections enacted in lieu thereof, to be known as sections 288.090, 288.126, 288.130, 288.150 and 288.160, to read as follows:

288.090. 1. Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this law. Such contributions shall become due and be paid by each employer to the division for the fund on or before the last day of the month following each calendar quarterly period of three months except when regulation requires monthly payment. Any employer upon application, or pursuant to a general or special regulation, may be granted an extension of time, not exceeding three months, for the making of his quarterly contribution and wage reports or for the payment of such contributions. Payment of contributions due shall be made to the treasurer designated pursuant to section 288.290.

(1) In the payment of any contributions due, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent;

(2) Contributions shall not be deducted in whole or in part from the wages of individuals in employment.

2. As of June thirtieth of each year, the division shall establish an average industry contribution rate for the next succeeding calendar year for each of the industrial classification divisions listed in the Standard Industrial Classification Manual furnished by the federal government. The average industry contribution rate for each standard industrial classification

division shall be computed by multiplying total taxable wages paid by each employer in the industrial classification division during the twelve consecutive months ending on June thirtieth by the employer's contribution rate established for the next calendar year and dividing the aggregate product for all employers in the industrial classification division by the total of taxable wages paid by all employers in the industrial classification division during the twelve consecutive months ending on June thirtieth. Each employer will be assigned to a standard industrial classification code division as determined by the division in accordance with the definitions contained in the Standard Industrial Classification Manual, and shall pay contributions at the average industry rate established for the preceding calendar year for the industrial classification division to which it is assigned or two and seven-tenths percent of taxable wages paid by it, whichever is the greater, unless there have been at least twelve consecutive calendar months immediately preceding the calculation date throughout which its account could have been charged with benefits. The division shall classify all employers meeting this chargeability requirement for each calendar year in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such experience. The division shall determine the contribution rate of each such employer in accordance with sections 288.113 to 288.126. Notwithstanding the provisions of this subsection, any employing unit which becomes an employer pursuant to the provisions of subsection 7 or 8 of section 288.034 shall pay contributions equal to one percent of wages paid by it until its account has been chargeable with benefits for the period of time sufficient to enable it to qualify for a computed rate on the same basis as other employers.

3. Benefits paid to employees of any governmental entity and nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection, a "nonprofit organization" is an organization (or group of organizations) described in section 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under section 501(a) of such code.

(1) A governmental entity which, pursuant to subsection 7 of section 288.034, or nonprofit organization which, pursuant to subsection 8 of section 288.034, is, or becomes, subject to this law on or after April 27, 1972, shall pay contributions due under the provisions of subsections 1 and 2 of this section unless it elects, in accordance with this subdivision, to pay to the division for the unemployment compensation fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such governmental entity or nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election; except that, with respect to benefits paid for weeks of unemployment beginning on or after January 1, 1979, any such election by a governmental entity shall be to pay to the division for the unemployment compensation fund an

amount equal to the amount of all regular benefits and all extended benefits paid that is attributable to service in the employ of such governmental entity.

(a) A governmental entity or nonprofit organization which is, or becomes, subject to this law on or after April 27, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one calendar year, provided it files with the division a written notice of its election within the thirty-day period immediately following the date of the determination of such subjectivity. The provisions of paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100 shall not apply in the calendar year 1998 and each calendar year thereafter, in the case of an employer who has elected to become liable for payments in lieu of contributions.

(b) A governmental entity or nonprofit organization which makes an election in accordance with paragraph (a) of this subdivision will continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which such termination shall first be effective.

(c) A governmental entity or any nonprofit organization which has been paying contributions under this law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the division not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next calendar year.

(d) The division, in accordance with such regulations as may be adopted, shall notify each governmental entity or nonprofit organization of any determination of its status of an employer and of the effective date of any election which it makes and of any termination of such election. Such determination shall be subject to appeal as is provided in subsection [3] 4 of section 288.130.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of paragraph (a) of this subdivision, as follows:

(a) At the end of each calendar quarter, or at the end of any other period as determined by the director, the division shall bill the governmental entity or nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization; except that, with respect to extended benefits paid for weeks of unemployment beginning on or after January 1, 1979, which are attributable to service in the employ of a governmental entity, the governmental entity shall be billed for the full amount of such extended benefits.

(b) Payment of any bill rendered under paragraph (a) of this subdivision shall be due and

shall be made not later than thirty days after such bill was mailed to the last known address of the governmental entity or nonprofit organization or was otherwise delivered to it.

(c) Payments made by the governmental entity or nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(d) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that apply to past due contributions. Also, unpaid amounts in lieu of contributions, interest, penalties and surcharges are subject to the same assessment, civil action and compromise provisions of this law as apply to unpaid contributions. Further, the provisions of this law which provide for the adjustment or refund of contributions shall apply to the adjustment or refund of payments in lieu of contributions.

(3) If any governmental entity or nonprofit organization fails to timely file a required quarterly wage [reports or is delinquent in making payments in lieu of contributions, interest, penalties and surcharges as required under this chapter, the division may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next calendar year, and such termination shall be effective for that and the next calendar year] **report, the division shall assess such entity or organization a penalty as provided in subsections 1 and 2 of section 288.160.**

(4) Except as provided in subsection 4 of this section, each employer that is liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer; except that, with respect to benefits paid for weeks of unemployment beginning on or after January 1, 1979, a governmental entity that is liable for payments in lieu of contributions shall pay to the division for the fund the amount of all regular benefits and all extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer in the base period of the claim, the amount chargeable to each employer shall be obtained by multiplying the benefits paid by a ratio obtained by dividing the base period wages from such employer by the total wages appearing in the base period.

(5) Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of subdivision (1) of this subsection, may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subdivision. Upon approval of the application, the division shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the application was received and shall notify the group's representative of the effective date of the

account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the director or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bears to the total wages paid during such quarter for service performed in the employ of all members of the group. The director shall prescribe such regulations as he deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subdivision, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this subdivision by members of the group and the time and manner of such payments.

4. Any employer which elects to make payments in lieu of contributions into the unemployment compensation fund as provided in subdivision (1) of subsection 3 of this section shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previous work not classified as insured work as defined in section 288.030 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

5. Any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund in an amount equal to the interest rate on United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's account. Governmental entities except cities, counties and the state of Missouri which elect to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation fund in an amount equal to one-half of the interest rate on United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of total benefit payments chargeable and not chargeable for the calendar quarter. The provisions of this subsection shall not be effective after September 30, 1993.

6. Beginning October 1, 1993, through December 31, 1993, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund in an amount equal to the interest rate of United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's

account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of total benefit payments chargeable and not chargeable for the calendar quarter.

7. Beginning January 1, 1994, through December 31, 1995, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund. The calendar year surcharge rate will be the base prime rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks as of November thirtieth of the preceding year. The additional surcharge will be the surcharge rate multiplied by the total benefit payments charged to the employer's account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of total benefit payments chargeable and not chargeable for the calendar quarter.

8. Beginning January 1, 1996, through December 31, 1996, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for the total benefit payments chargeable to its account pursuant to the provisions of section 288.100 plus one-third of the total benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100. The remaining two-thirds of the benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100 shall be paid by the unemployment compensation trust fund.

9. Beginning January 1, 1997, through December 31, 1997, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for the total benefit payments chargeable to its account pursuant to the provisions of section 288.100 plus two-thirds of the total benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100. The remaining one-third of the benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100 shall be paid by the unemployment compensation trust fund.

10. Beginning January 1, 1998, and each calendar year thereafter, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for all benefit payments and shall not have charges relieved pursuant to the provisions of paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100.

11. (1) For the purposes of this chapter, a common paymaster arrangement will not exist unless approval has been obtained from the division. To receive a division-approved common paymaster arrangement, the related corporation designated to be the common paymaster for the related corporations must notify the division in writing at least thirty days prior to the beginning of the quarter in which the common paymaster reporting is to be effective. The common paymaster shall furnish the name and account number of each corporation in the related group

that will be utilizing the one corporation as the common paymaster. The common paymaster shall also notify the division at least thirty days prior to any change in the related group of corporations or termination of the common paymaster arrangement. The common paymaster shall be responsible for keeping books and records for the payroll with respect to its own employees and the concurrently employed individuals of the related corporations. In order for remuneration to be eligible for the provisions applicable to a common paymaster, the individuals must be concurrently employed and the remuneration must be disbursed through the common paymaster. The common paymaster shall have the primary responsibility for remitting all required quarterly contribution and wage reports, contributions due with respect to the remuneration it disburses as the common paymaster and/or payments in lieu of contributions. The common paymaster shall compute the contributions due as though it were the sole employer of the concurrently employed individuals. If the common paymaster fails to remit the quarterly contribution and wage reports, contributions due and/or payments in lieu of contributions, in whole or in part, it shall remain liable for submitting the quarterly contribution and wage reports and the full amount of the unpaid portion of the contributions due and/or payments in lieu of contributions. In addition, each of the related corporations using the common paymaster shall be jointly and severally liable for submitting quarterly contribution and wage reports, its share of the contributions due and/or payments in lieu of contributions, penalties, interest and surcharges which are not submitted and/or paid by the common paymaster. All contributions due, payments in lieu of contributions, penalties, interest and surcharges which are not timely paid to the division under a common paymaster arrangement shall be subject to the collection provisions of this chapter.

(2) For the purposes of this subsection, "concurrent employment" means the simultaneous existence of an employment relationship between an individual and two or more related corporations for any calendar quarter in which employees are compensated through a common paymaster which is one of the related corporations, those corporations shall be considered one employing unit and be subject to the provisions of this chapter.

(3) For the purposes of this subsection, "related corporations" means that corporations shall be considered related corporations for an entire calendar quarter if they satisfy any one of the following tests at any time during the calendar quarter:

(a) The corporations are members of a "controlled group of corporations". The term "controlled group of corporations" means:

a. Two or more corporations connected through stock ownership with a common parent corporation, if the parent corporation owns stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote or at least fifty percent of the total value of shares of all classes of stock of each of the other corporations; or

b. Two or more corporations, if five or less persons who are individuals, estates or trusts

own stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote or at least fifty percent of the total value of shares of all classes of stock of each of the other corporations; or

(b) In the case of corporations which do not issue stock, at least fifty percent of the members of one corporation's board of directors are members of the board of directors of the other corporations; or

(c) At least fifty percent of one corporation's officers are concurrently officers of the other corporations; or

(d) At least thirty percent of one corporation's employees are concurrently employees of the other corporations.

288.126. [1. An employer shall be assigned a contribution rate which shall be the greater of five and four-tenths percent or the employer's calculated contribution rate for any calendar year if, when the contribution rates for that year are calculated, the employer has not filed all required reports for all periods included in the calculation of the rates. If, however, the required reports and information are filed with the division within thirty calendar days following the date the employer is notified of its contribution rate, that information will be used in a determination of the employer's contribution rate as provided in this chapter.

2.] If an employer is not eligible for a rate calculation after once becoming eligible because the employer did not have twelve consecutive calendar months immediately preceding the calculation date throughout which its account could have been charged with benefits, his rate shall be no less than five and four-tenths percent.

288.130. 1. Each employing unit shall keep true and accurate payroll and other related records, containing such information as the division may by regulation prescribe for a period of at least three calendar years after the record was made. Such records shall be open to inspection and be subject to being copied by authorized representatives of the division at any reasonable time and as often as may be necessary. Any authorized person engaged in administering this law may require from any employing unit any sworn or unsworn reports, with respect to individuals performing services for it, which are deemed necessary for the effective administration of this law.

**2. All employers required to report W-2 copy A information on magnetic media tape to the Social Security Administration pursuant to 26 CFR Section 301.6011-2, or successor regulations, are likewise required to report quarterly contribution and wage information due pursuant to section 288.090 to the division on magnetic tape or diskette in a format prescribed by the division.**

3. Each employer shall post and maintain in places readily accessible to the employer's workers printed statements concerning benefit rights, claims for benefits and such other matters related to the administration of this law as the division may by regulation prescribe. Each employer shall supply to workers copies of any printed statements relating to claims for benefits

when and as the division may by regulation prescribe. Such printed statements and other materials shall be supplied by the division without cost.

[3.] 4. A deputy shall make an ex parte determination after investigation but without hearing with respect to any matter pertaining to the liability of an employing unit which does not involve a claimant. The deputy shall promptly notify any interested employing units of each such determination and the reason for it. The division shall grant a hearing before an appeals tribunal to any employing unit appealing from any such ex parte determination provided an appeal is filed in writing within thirty days following the date of notification or the mailing of such determination to the party's last known address. In the absence of an appeal any such determination shall become final at the expiration of a thirty-day period. The deputy may, however, at any time within a year from the date of the deputy's determination, for good cause, reconsider the determination and shall promptly notify all interested employing units of his amended determination and the reason for it.

[4.] 5. The thirty-day period provided in subsection [3] 4 of this section may, for good cause, be extended.

288.150. Contributions unpaid for any quarter which become due and payable after the last day of the calendar quarter in which this act becomes effective (August 28, 1994) shall bear interest at the rate established by the Internal Revenue Code pursuant to title 26, section 6621(b), in effect on the date on which such contribution became due, provided, however, that such interest shall abate for any period of any extension of time granted by the division pursuant to the provisions of section 288.090. Such interest shall accrue for each month, or part of a month, after such date until payment is received by the division, except that:

(1) An employing unit not previously subject to this law, which becomes an employer and does not refuse to make the reports required under this law shall not be liable for such interest until [fifteen] **thirty** days after it has been notified that the division has made a determination that it is an employer subject to this law; or

(2) An employing unit previously subject to this law, which acquires substantially all of the business of an employer under section 288.110 and whose contribution rate increases after the accounts were combined and does not refuse to make the reports required under this law shall not be liable for such interest until [fifteen] **thirty** days after it has been notified that the division has made a determination that it is a successor employer under this chapter.

288.160. 1. If any employer neglects or refuses to make a report [and payment of contributions] as required by this law the division shall make an estimate based on any information in its possession or that may come into its possession of the amount of wages paid by such employer for the period in respect to which the employer failed to make report [and payment], and upon the basis of such estimated amount compute and assess the contributions and interest payable by such employer, adding to such sum a penalty [equal to ten percent thereof] **as**

**set forth in subsection 2 of this section.** Promptly thereafter, the division shall give to such employer written notice of such estimated contributions, interest and penalties as so assessed, the notice to be served personally or by registered mail, directed to the last known principal place of business of such employer in this state or in any state in the event the employer has none in this state.

**2. If any employer neglects or refuses to file any report as required by this law, within thirty days from the due date, there shall be added to the contributions computed by the division, in accordance with subsection 1 of this section, a penalty equal to the greater of one hundred dollars or ten percent of the contributions for each month, or fraction thereof, during which such failure continues, not exceeding the greater of two hundred dollars or twenty percent of the contributions in the aggregate.**

**3.** In any case in which any contributions, interest or penalties imposed by this law are not paid when due, it shall be the duty of the division, when the amount of contributions, interest or penalties is determined, either by the report of the employer or by such investigation as the division may make, to assess the contributions, interest and penalties so determined against such employer and to certify the amount of such contributions, interest and penalties and give such employer written notice, served personally or by registered mail, directed to the last known address of such employer in this state or in any state, in the event the employer has none in this state.

**[3.] 4.** If fraud or evasion on the part of any employer is discovered by the division, the division shall determine the amount by which the state has been defrauded, shall add to the amount so determined a penalty equal to twenty-five percent thereof, and shall assess the same against the employer. The amount so assessed shall be immediately due and payable; provided, however, that the division shall promptly thereafter give to such employer written notice of such assessment.

**[4.] 5.** Any employer against whom an assessment is made pursuant to the provisions of subsections 1, 2 [and], 3 **and 4** [above] **of this section** may petition for reassessment. The petition for such reassessment shall be filed with the division during the thirty-day period following the day of service or mailing of the notice of such assessment. In the absence of the filing of such a petition for reassessment the assessment shall become final upon the expiration of such a thirty-day period. Each such petition for reassessment shall set forth specifically and in detail the grounds upon which it is claimed the assessment is erroneous.

**[5.] 6.** (1) In any case in which any contributions, interest or penalties imposed by law are not paid when due, the notice of the assessment of such contributions, interest and penalties shall be served upon or mailed to the employer within three years of the date upon which the payment of the contributions was due except that in any case of fraud or misrepresentation on the part of the employer, the notice of the assessment of the contributions, interest and penalties may

be served upon or mailed to the employer at any time.

(2) The giving of the notice of the making of the assessment shall toll any statute of limitations on the collection of any contributions, interest and penalties assessed.

(3) In the event any employer is entitled to the advantage of the soldiers' and sailors' civil relief act of 1940, or any amendment thereto, prior to the date any assessment becomes final, such employer shall be permitted to file a petition for reassessment at any time within ninety days following such employer's discharge from the armed services.

(4) The certificate of assessment which, pursuant to the provisions of section 288.170, may be filed with the clerk of the circuit court shall, upon such filing, thereafter be treated in all respects as a final judgment of the circuit court against the employer and the general statute of limitations applying to other judgments of courts of record shall apply.

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